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NOMINATION OF RUSSELL FRANK CANAN

Y 4. G 74/9: S. HRG. 103-499

Nomination of Russell Frank Canan,...

HEARING

BEFORE THE

COMMITTEE ON

GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

NOMINATION OF RUSSELL FRANK CANAN TO BE ASSOCIATE JUDGE
OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

AUGUST 3, 1993

Printed for the use of the Committee on Governmental Affairs



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1994

71-591 cc

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-044181-1

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NOMINATION OF RUSSELL FRANK CANAN TO BE ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TUESDAY, AUGUST 3, 1993

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 11:09 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Jim Sasser presiding.

OPENING STATEMENT OF SENATOR SASSER

Present: Senators Sasser and McCain.

Committee staff assigned: Doris Clanton, Deborah Cohen (Senator Glenn); Susanne Marshall (Senator Roth); John Wagster, John Belferman (Senator Sasser); and Paul Feeney (Senator McCain).

Senator SASSER. [Presiding.] The Committee will come to order.

I want to apologize to our witnesses this morning and the nominee for being late in getting started. We had four successive votes on the floor of the Senate this morning, and that is what has delayed us.

Today, the Committee on Governmental Affairs will be hearing the nomination of Mr. Russell F. Canan. Would you come forward, Mr. Canan, and take your seat, please, at the witness table?

I want to welcome you here this morning, Mr. Canan. As you know, you have been nominated to fill a vacancy for Associate Judge of the Superior Court of the District of Columbia. If I am not mistaken, Mr. Canan, you have the distinction of being the first person nominated for a judicial vacancy by President Bill Clinton here in the District of Columbia.

The President selected Mr. Canan back on March 3 of this year from a list of three eligible candidates submitted by the District of Columbia Judicial Nominating Commission, and, if confirmed, the nominee before the Committee this morning will, we hope, serve a full 15-year term on the court.

The record of this morning's hearings will include the nominee's biographical and financial statements. For the benefit of those in attendance and for the record, I would like to summarize briefly Mr. Canan's background and qualifications.

I think the nominee before us this morning has demonstrated an unsurpassed commitment to members of our society and of the citizens of this city, in particular, who are most disadvantaged and often in need of legal services.

After graduating from Syracuse University in 1972, Mr. Canan spent a year as a social worker with the East Coast Migrant Health Project. He then attended the Antioch School of Law here in Washington, the forerunner of the present D.C. School of Law, which enjoyed a National reputation as a clinically oriented school, with an emphasis on serving the underprivileged.

During law school, the nominee clerked to the Honorable John D. Fauntleroy of the Superior Court of the District of Columbia, the same bench that Mr. Canan awaits confirmation for at the present time.

Apart from a year's sabbatical to work with the Southern Center for Human Rights, Mr. Canan's subsequent legal career has been devoted, in his word, to "representing poor people in the District of Columbia."

He has advised the Committee that about 60 percent of his practice has consisted of criminal defense work. He has given special effort and attention to some of the least favored elements of our criminal justice system, those faced with the death penalty.

I need hardly remark that this issue is a subject of strong emotions and high opinion on both sides, including during last year's referendum here in the Nation's Capital. None can deny the depth of emotional, as well as professional commitment required of those who undertake these very difficult and very often very unpopular cases.

The balance of the nominee's practice has consisted of civil litigation in areas such as civil rights, mental health actions, juvenile and domestic relations matters, landlord-tenant issues and privacy law.

Without over-generalizing, I think it is fair to say that Mr. Canan's practice has, therefore, touched on subjects of the greatest concern to many citizens of the District, and he I think will be welcomed by the constituents, his legal constituents, when and if he is confirmed.

Lastly, Mr. Canan has managed to find time to serve as an adjunct professor at Georgetown University Law Center and the Washington College of Law at American University, as well as his own alma mater and its successor, the D.C. School of Law.

Now, following the custom for nominations coming before the Committee on Governmental Affairs, I will summarize for the record the confirmation procedure adopted by Rule 8 of the Committee in 1978. It is meant to afford a complete investigation of the nominee's background, qualifications and integrity, and to inquire into the suitability of the individual for the position for which he or she has been nominated.

As I indicated before, detailed information which has been supplied by the nominee about his education, employment, appointments and professional achievements will appear in their totality in the record of this hearing.

In addition, Mr. Canan furnished a complete financial statement. This information was reviewed by the Committee staff and made available for inspection by the public at the Committee offices.

A background investigation, as is customary, has been carried out by the FBI, and the FBI's report is reviewed by the Chairman and ranking member of the Committee.

Lastly, the nominee was interviewed by the Committee staff, whose summary report to the Committee remains confidential. Following today's hearings, I am hopeful it will be possible for the Senate to act on Mr. Canan's nomination before the August recess, which means we have got to move fast.

Let me take this opportunity to express our appreciation to the nominee for his assistance and cooperation with this Committee and with the Committee staff.

I guess we are ready to proceed with the testimony now, so, Mr. Canan, if you would please raise your right hand: Do you solemnly swear that the testimony you are about to give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CANAN. I do.

Senator SASSER. Please be seated.

TESTIMONY OF RUSSELL F. CANAN, TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Senator SASSER. As the nominee was previously advised, there are standard questions we are required to ask on the record under Committee rules, and I will begin by asking those now.

First, Mr. Canan, is there anyone in the Committee room that you would like to introduce today? Is your family with you or others that you would like to call the Committee's attention to?

Mr. CANAN. Thank you, Senator.

It is a privilege to be appearing before you today. I would like to introduce to you, sir, my wife Lee Ware Coykendall, my sister Stacy Canan and her husband Jonathan Zucker, my aunt and uncle, Eileen and Ira Wennik, and a good friend of mine, John Scheibel, who I might add is the staff director for the House Subcommittee on Trade and Environment.

Also present with us here today are several law clerks who work in our law firm, past and present: Darren Sovin, Shawn Magnum and Jane Shore, and also present is Ms. Terria Hicks, who is presently an intern for my former law partner, Judge Steve Milliken, and, if she confirmed, she has agreed to work with me as my law clerk on the bench.

Senator SASSER. Thank you. We want to welcome all of your friends here this morning and your professional colleagues, and most particularly welcome your family. It is a pleasure to have them here with the Committee this morning, and I am sure they are very proud of you, Mr. Canan, for the nomination which you have received.

Mr. Canan, do you know of any reason, personal or otherwise, which would prevent you from fully and honorably discharging your responsibilities as a judge of the Superior Court of the District of Columbia?

Mr. CANAN. No, sir.

Senator SASSER. Looking ahead and asking for your best present estimate, are you prepared, if confirmed, to serve a full 15-year term of office?

Mr. CANAN. Yes, sir.

Senator SASSER. Is there anything else in your personal or professional background which would present any conflict of interest with the positions and responsibilities for which you have been nominated?

Mr. CANAN. No, sir.

Senator SASSER. Now, should a conflict of interest or the appearance of one arise in the future, would you tell the Committee how you would plan to resolve such a conflict?

Mr. CANAN. Yes, sir. Actually, the only possible conflict that might arise, and I did not neglect them on purpose, because they are very dear to me, my two law partners, Steven Kiersh and Cynthia Lobo are here and present today, and should it come to pass that they would have a case before the court in which I was presiding, I would feel obliged to recuse myself as the presiding judge.

Senator SASSER. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before a duly constituted committee of Congress, if you are confirmed?

Mr. CANAN. Yes, sir.

Senator SASSER. Mr. Canan, you have a considerable reputation, not merely as a counsel for individual inmates, but as an opponent of the death penalty. As I have said, principal positions on this difficult issue I think command respect from those on both sides of the question. In one sense, since there is no death penalty in this jurisdiction, your position does not bear directly on your role as judge, if you are confirmed.

But let us suppose a citizen of the District were to take that position as indicative of leniency towards convicted criminals in general. Let us say they say, well, we have got a judge here that is opposed to the death penalty, so this must mean he is going to be soft on criminals. How would you respond to that accusation or suggestion?

Mr. CANAN. Senator, I would say that the highest obligation of a trial judge is to follow the law, interpret the facts and apply them to the law that are applicable in a case, and render justice as best I could.

I am very sensitive, as a member of this community, to the crime problem in this community. I believe that those who commit violent crimes against persons and property have to be punished and punished severely. I believe those who have not committed violent crimes, at least in their early stages, hopefully there can be some intervention, particularly with drug problems and the like, and the court can assist. But for the likes of terms of violent crimes, I believe that the court has an obligation to protect the community, and I intend to do so.

Senator SASSER. So simply because you are opposed to the death penalty, that does not mean that you could not deal strongly with those who are convicted of violent crimes, is that what you are telling the Committee here this morning?

Mr. CANAN. Yes, sir.

Senator SASSER. I have noted from the materials submitted to the Committee that you take what might be called a holistic approach towards your criminal clients who are affected by substance abuse, which sadly describes a significant majority of the offenders in the Nation's Capital. That is, you take an active part in encour-

aging them to deal with the range of personal problems that have contributed to their legal difficulties.

As you know, the District opened an 800-bed correctional treatment facility, with Federal financial support, to address these same problems. Have you had experience with clients who have served in this facility?

Mr. CANAN. I have not had clients who have been sentenced or are serving sentence in the facility as of yet.

Senator SASSER. So do you have any opinion of how well this new facility is working at this juncture?

Mr. CANAN. I really do not, Senator. I am not well informed on that.

Senator SASSER. Well, I was interested in getting your opinion, if you had indeed represented people who had been in that facility or had had any contact with it.

I suppose that concludes the required questioning here under the Committee rules. Do you have any further statement that you might wish to make here this morning, Mr. Canan?

Mr. CANAN. Yes, sir. Before I present a statement, it would be my understanding that my partners, Mr. Steven Kiersh and Cynthia Lobo, be given a brief opportunity to address the Committee, Senator, if that is permissible.

Senator SASSER. Yes, they may come forward for a brief statement.

TESTIMONY OF STEVEN R. KIERSH, ESQ., CANAN, KIERSH AND LOBO, ACCOMPANIED BY CYNTHIA LOBO

Mr. KIERSH. Good morning, Senator.

Senator SASSER. Good morning.

Mr. KIERSH. It is with great pleasure that I take this opportunity to—

Senator SASSER. Before going forward, would you identify yourself for the record, please?

Mr. KIERSH. My name is Steven Kiersh, a partner with Canan, Kiersh and Lobo.

It is with great pleasure that I take this opportunity to speak on behalf of my friend and my law partner, Russell Canan. I have known Russ personally and professionally for the past 12 years. I can attest to his extraordinary talent as a litigator.

Prior to becoming partners, we jointly litigated several Federal civil rights actions and tried a number of complex and intricate criminal cases. In each instance, Russ brought a diversity of qualities which are essential to the success of a litigating attorney. Those qualities include thoughtfulness, preparation, detailed knowledge of all relevant facts and substantive legal issues, devotion to his client and, most importantly, a profound degree of personal and professional integrity.

Russ has always been a tireless advocate for his clients. He possesses an exceptional knowledge of constitutional principle, and he truly appreciates the importance of judicial precedent and interpreting the Constitution. I cannot think of any other attorney who has so fervently applied and defended the Constitution throughout his legal career.

As an adjunct professor of law at Georgetown University, American University and at the D.C. School of Law, Russ has imparted his knowledge to many law students. They have greatly benefited from his knowledge, and I have personally seen many of them become outstanding attorneys.

During the course of our professional partnership, Russ has continued to display the array of attributes which have made him so successful. Every client of our firm who has been represented by Russ has enjoyed the finest representation available from an individual whose concern was the advancement of the legitimate interests of his client.

I have no doubt that Russ' talent, knowledge, integrity and his unwavering devotion to the Constitution will serve him extraordinarily well as a trial judge of the Superior Court of the District of Columbia. It is the citizens of this jurisdiction who can take great pleasure in knowing that a person of the caliber of Russell Canan will be the newest member of the court.

Thank you for allowing me the opportunity to speak.

Senator SASSER. Thank you.

I have got to suspend for just a moment here to take a telephone call from my Governor, so we will suspend for about 5 minutes.

[Recess.]

Senator SASSER. The Committee will come to order.

When we suspended, Mr. Kiersh had given a statement in support of Mr. Canan's nomination. Now, Mr. Canan, do you have any statement to make in your own behalf?

Mr. CANAN. Yes, sir.

Senator I am honored and gratified that the President has nominated me to be an Associate Judge of the Superior Court. If confirmed, I pledge to serve the community well. As one who has attended law school in the District, who clerked for a Superior Court judge, and afterwards hung up a shingle with two other classmates and primarily practiced law in the District for most of my professional career in the major divisions of the Superior Court—and I have also practiced in many other state and Federal courts—I have come to the believe that the Superior Court is one of the finest trial level bench in the country. It has superb judges who strived to treat people with fairness and dignity, and it would be a great honor for me to continue in that tradition of public service.

Senator I believe that a good trial judge must possess certain qualities such as integrity. The judge, he or her, their word must be good and honesty unquestioned. A judge should have what is generally called good judicial temperament. I like to think of it more or less as good judicial respect. I believe if you extend respect to most people, more often than not it will be reciprocated. I believe at times it is appropriate to be patient, where appropriate, you have to be stern, but, in any event, under all circumstances, it is important to be courteous and fair-minded.

I believe a trial judge should be rich in experience, both in the law and in life, and a trial judge obviously should have good judgment and common sense, be open-minded and fair, to understand the law, to be able to apply the law to the facts. To understand that, oftentimes it is a matter of balancing competing equities to try to reach common ground. It is also just as important to realize

that in certain cases you cannot reach common ground and that a judge has to be decisive, no matter how hard the decision may be, make a decision and stick to it.

Finally, Senator, I believe that a good trial judge can be an inspiration to the community, to the litigants that appear before the judge, and to the bar, as well.

If I may just add one personal note, the model judge for me in my career has been the late Robert A. Shuker, who recently passed away unexpectedly. Judge Shuker was a model judge in all respects, and I was very fortunate that he served as a mentor for me, for which I shall always be indebted.

I believe I possess the necessary qualities to be a good trial judge. I aspire to be an exemplary judge.

Thank you, Senator.

Senator SASSER. Thank you, Mr. Canan.

We have been joined by Senator McCain, and I now ask Senator McCain if he has any statement to make or any questions he wishes to address to the nominee.

Senator MCCAIN. Just a couple of questions, Mr. Chairman.

Mr. Canan, are you familiar with Judge Green?

Mr. CANAN. Judge Green?

Senator MCCAIN. Yes.

Mr. CANAN. In the District Court?

Senator MCCAIN. Yes.

Mr. CANAN. There are three Judge Greens.

Senator MCCAIN. Let's see.

Mr. CANAN. Joyce Green, Joyce Hens Green?

Senator MCCAIN. I am looking at a case that you were involved in where female prisoners were transferred illegally, according to the judge—

Mr. CANAN. Judge Harold Greene.

Senator MCCAIN. Judge?

Mr. CANAN. I believe that was Judge Harold Greene.

Senator MCCAIN. What is your view of Judge Harold Greene? Do you have an opinion of his professionalism or his reputation? I think he is the one that did AT&T, a major ruling on AT&T, which he did what Congress had been unable to do for years, is the major area that some of us are familiar with him who are not in the legal profession. I wonder if you have a view of him.

The reason I ask is because you were quoted by the Associated Press at the time about Judge Greene's reputation as a liberal judge, to which he replied—and I believe that is you—"To me, a liberal means neo-fascist."

Mr. CANAN. I do not believe I ever said that, sir. I do not believe I ever said that.

Senator MCCAIN. Well, on June 24, 1988, Associated Press:

"Attorney Russell F. Canan said the inmates are being selectively punished for their beliefs, and not because of any so-called security threats. About Greene's reputation as a liberal judge, to which you replied, to me, a liberal means neo-fascist. During the hearing, Greene denied a motion to remove a clear plastic wall between the spectators and the court, that the defense claims is intended to intimidate the defendants and prejudice jurors, once the case goes to trial. These women and men were accused by the Gov-

ernment to, in essence, criminalize their political beliefs, said defense lawyer Russell F. Canan."

Mr. CANAN. Senator, I never ever—I do not know where that came from—I never saw that quote, I never heard it, I never characterized Judge Greene as a neo-fascist.

Senator MCCAIN. Fine. That is why we have these hearings, is to give you an opportunity to respond. The standard procedure that is used, you now, is the Lexis/Nexis search in any area that you have been involved in. So you never said that about Judge Greene?

Mr. CANAN. I never heard that I said that about him.

Senator MCCAIN. Good. I just wanted to clear that up.

Mr. CANAN. I understand. I have appeared before judge Greene many times. I believe he is an excellent trial judge.

Senator MCCAIN. Good. Senator Sasser and I appreciate the fact that people are misquoted from time to time.

Senator SASSER. Indeed we do.

Senator MCCAIN. Do you believe that drugs should be decriminalized?

Mr. CANAN. No.

Senator MCCAIN. But you are a strong opponent of the death penalty? Are you an opponent of the death penalty?

Mr. CANAN. I am personally opposed to the death penalty.

Senator MCCAIN. Again, from reading the background information I was provided, especially electrocution?

Mr. CANAN. Well, that is why I attended a client's execution and I know first-hand exactly what goes on there, so I found that to be a fairly difficult experience.

Senator MCCAIN. So your views are in opposition to the death penalty in general, but specifically electrocution, because, according to what I read, you observed it takes three jolts, sort of a cruel process, is that—

Mr. CANAN. Well, I think one can make a case that there is not enough known about electrocution to make it clear that it is in fact a painless method of executing individuals, and that was my experience and there has been a fair amount of debate and discussion over that very precise point.

Senator MCCAIN. And there are now some States, I believe Texas, I am not sure, because I am not that familiar, but I know there are some States where injection is used. Would that be a more humane method, or any method would be not acceptable in your view, because of your personal opposition to the death penalty?

Mr. CANAN. I believe lethal injection is more humane. To answer your second point, I am personally opposed to the death penalty. I understand well that is the law of the land, the Supreme Court has ruled on it definitively and it is constitutional, and in the unlikely event it would come before the District of Columbia, I would follow the law. But I do recognize that it is the law, for sure.

Senator MCCAIN. I do not want to extend the hearing too long, Mr. Chairman.

Let me just get into it for a second with you, just for scholastic reasons. The argument for the death penalty, as I understand it—at least from the people in my State, and I am not a lawyer, as you know—is that there are certain crimes that are committed

which are so heinous in nature that the only adequate response is the death penalty, and the other is from the taxpayers' point of view that the enormous expense associated with keeping someone who has been convicted of a certain crime for the rest of his or her life in incarceration is an unnecessary burden on the taxpayer.

Those are two of the major arguments in favor of the death penalty. Would you respond to either one of those? I understand that you are giving your personal opinion here, and you have made it clear that you intend to uphold the law.

Mr. CANAN. Yes, sir. As to the first part, I think it is a very legitimate view that many people have, in fact, a majority of the people have, that the death penalty serves a legitimate societal function to effectuate retribution and to express society's outrage at heinous criminal offenses, and I understand that, and I think reasonable people could disagree as to whether or not it serves an effective purpose. I understand that and I respect people who have that view.

The second view as to the cost-effectiveness, I think there is a great deal of debate as to whether or not that second aspect is in fact true. New York State did a study and other States have tried to do an economic study as to whether or not it is economically more appropriate to execute people, it would be cheaper, in other words, to put it bluntly, as opposed to having incarceration for life.

I think you would find that the information is conflicting. There is substantial evidence that indicates that because of the resources required to prosecute, defend, investigate and then litigate death penalty cases throughout the State and Federal courts, that it is in fact more expensive to have a death penalty than less expensive. But that is a debate that people have had, and I am not well informed one way or the other to say other than I am aware of the argument.

Senator MCCAIN. But your personal views are that it is immoral or people could be executed and they were really innocent? What is your argument, your personal argument against the death penalty?

Mr. CANAN. I believe that, as a lawyer, as a person who has tried cases and is aware of the imperfect nature of the criminal justice system, I am well aware that innocent people have been convicted, and just in the last couple of weeks that has been very obvious in the case out of Maryland.

I believe that all too often it has affected poor people in this country disproportionately and it has affected black Americans disproportionately. I am not convinced philosophically. If I were convinced, Senator, that the death penalty actually deterred crime, future crime, if it could be proven with any kind of reasonable certainty that it deterred crime, I think it would, at least for me, be a much more difficult issue.

But even the Supreme Court in its rulings has indicated, at least from their viewpoint, that the deterrence is unknown. There has been no proof that it actually deters crime, and there has been some proof that it does not deter crime. So I view it like that in a very practical viewpoint in terms of its history of innocent people and its disproportionate impact on the poor and minorities in our country.

Senator MCCAIN. And I respect your view of it and I think you articulate it quite well. I appreciate your testimony and wish you every success.

Thank you, Mr. Chairman.

Senator SASSER. Thank you very much, Senator McCain.

The staff has handed me a Lexis/Nexis here, datelined June 24, 1988, which is an Associated Press story apparently by James Rowley. This story indicates that the quote came from William M. Kunstler. It says, "Earlier Kunstler was asked about Greene's reputation as a liberal judge, to which he replied, to me a liberal means neo-fascist."

Senator MCCAIN. Perhaps it was not clear, Mr. Chairman. The copy I have—anyway, I think it has been clarified.

Senator SASSER. Good. In any case—

Senator MCCAIN. It sounds like something that might have emanated from—

Senator SASSER. Something Mr. Kunstler might have said.

[Laughter.]

Mr. CANAN. No comment on that one.

Senator SASSER. I have heard liberals called a lot of things, but not neo-fascist.

Senator MCCAIN. Thank you, Mr. Chairman. I wish you every success, judge.

Mr. CANAN. Thank you, sir.

Senator MCCAIN. Good luck to you.

Senator SASSER. Thank you very much, Senator McCain.

The Committee will hold the hearing record open on this nomination until Friday, August 6, and I encourage any member who may have additional questions for the nominee to submit them in writing for his written response, so that both questions and answers may appear in the record.

Let me say once again, Mr. Canan, on behalf of myself and the Committee, we appreciate you appearing before us this morning. We are going to make every effort to have the Committee and the full Senate act on your nomination very promptly.

There being no further business to come before it, the Committee stands adjourned subject to the call of the Chair.

[Whereupon, at 11:56 a.m., the Committee was adjourned subject to call.]

APPENDIX

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)
Russell Frank Canan
2. Position to which nominated:
Associate Judge of the Superior Court of the District of Columbia.
3. Date of Nomination: March 3, 1993
4. Address: (List current place of residence and office address.)
Office: Canan, Kiersh & Lobo, 601 Pennsylvania Ave. N.W., Suite 900,
Washington, D.C. 20004
Home: 3811 Alton Place. N.W., Washington, D.C. 20016
5. Date and place of birth:
April 4, 1950, New York City, New York
6. Marital status: (Include maiden name of wife or husband's name.)
Married to Lee Ware Coykendall
7. Names and ages of children: None.
8. Education:
Oceanside Senior High School, Oceanside, New York, 1965-1968, Graduated in June of 1968
Syracuse University, Syracuse, New York, 1968-1972, Bachelor of Arts, June, 1972
City of London College, London, England, January-June, 1971
Antioch School of Law, Washington, D.C., 1973-1976, Juris Doctor, June, 1976
9. Employment Record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)
East Coast Migrant Health Project, Social Worker, Washington, D.C., July, 1972-September, 1973
Hon. John D. Fauntleroy, Superior Court of the District of Columbia, Law Clerk, Washington, D.C., January-June, 1975
Legal Assistance Branch, Superior Court of the District of Columbia, Washington, D.C., Law Clerk, September, 1975-December, 1976
Canan, Burns & O'Toole, Partner/Attorney, Washington, D.C., December, 1976-May, 1984
Southern Center for Human Rights, Attorney, Atlanta, Georgia, January, 1983-December, 1983
Russell F. Canan, Attorney At Law, Solo Practitioner, Washington, D.C., June, 1984-July, 1985
Milliken, Van Susteren & Canan, Partner/Attorney, Washington, D.C., August, 1985-January, 1990
Russell F. Canan, Attorney At Law, Solo Practitioner, Washington, D.C., January, 1990-April, 1992
Canan, Kiersh & Lobo, Partner/Attorney, Washington, D.C., May, 1992-present
10. Military Service: List any military service, including dates, rank, and type of discharge.
None.
11. Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.
None.

12. Previous Appointments: Prior to this appointment, have you ever been nominated for a position requiring confirmation by the Senate? If so, please list each such position, including the date of nomination, Senate confirmation, and Committee hearing, if any.

No.

13. Business relationships: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Other than the business relationships listed above in Question #9, I have had the following other business relationships:

Georgetown University Law Center, Washington, D.C., Adjunct Professor
Washington College of Law, American University, Washington, D.C., Adjunct Professor

District of Columbia School of Law, Washington, D.C., Adjunct Professor
Antioch School of Law, Washington, D.C., Adjunct Professor
American Bar Association, Washington, D.C., Consultant

14. Memberships: List all memberships and offices held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

I am presently a member of the following organizations:

District of Columbia Association of Criminal Defense Lawyers, Washington, D.C.

African Wildlife Foundation, Washington, D.C.

In the past, I have been a member of the following organizations:

American Bar Association, Washington, D.C.

District of Columbia Family Lawyers' Association, Washington, D.C.

National Association of Criminal Defense Lawyers, Washington, D.C.

Death Penalty Defense Fund, Washington, D.C.

Superior Court Trial Lawyer's Association, Washington, D.C.

Full Circle Dance Company, Washington, D.C.

15. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last ten years.

None.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 5 years.

None.

16. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

None.

17. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written. It would be helpful for the Committee to have three copies of each published writing. Please denote any of those for which you are unable to provide copies.

Canan, *Burning at the Wire: The Execution of John Evans*, in "Facing the Death Penalty," (M. Radelet ed.) Temple University Press (1989)

Seltzer, Lopes, Canan, and Dayan, *The Effect of Death Qualification on the Propensity of Jurors to Convict: The Maryland Example*, 42 HOW.L.J. 571 (1986)

A copy of these articles are attached hereto as Exhibit #1. (Retained in Committee.)

18. Speeches: Provide the Committee with three copies of any formal speeches you have delivered during the last 5 years of which you have copies and are on topics relevant to the position for which you have been nominated.

None.

19. Congressional Testimony: Have you ever testified before a Committee of the Congress? If so, please provide details, including date(s).

I testified on behalf of the National Association of Criminal Defense Lawyers before the House of Representatives, Subcommittee on Criminal Justice, Committee on Judiciary in regards to H.R. 343 and related bills for imposition of a federal death penalty. The subject of my testimony on July 24, 1986 concerned the method of execution used by various states in implementing the death penalty.

20. Selection:

(a) Do you know why you were chosen for this nomination by the President?

Although I have not been officially apprised of the reasons for this nomination by the President, I believe that I was appointed for the reasons set forth below in answer to the following question.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

After college, I worked for several years as a health education worker for the East Coast Migrant Health Project, a non-profit grantee of the then Department of Health, Education and Welfare where I helped establish health clinics for migrant farm workers throughout the South.

I attended Antioch School of Law where I focused on the rights of juveniles in the neglect and adjudication fields. I was honored to clerk for the late Hon. John D. Fauntleroy, whose speciality was juvenile law.

After law school, I have spent the bulk of my career representing poor people in the District of Columbia. Approximately sixty percent of my work concerns representing criminal defendants in the District of Columbia. The remainder of the practice has been diverse and varied with substantial work on complex civil litigation including civil rights actions, mental health causes, juvenile justice cases, domestic relations matters, landlord/tenant suits and litigation centering on privacy rights.

For the past fifteen years I have taught as an adjunct professor of law at Georgetown University Law Center, the American University, Washington College of Law, the District of Columbia School of Law and Antioch School of Law. I have taught courses on criminal law and procedure, juvenile justice, evidence and advanced evidence, trial advocacy and a seminar on the death penalty.

In 1983 and 1984 I took a sabbatical from private practice and helped establish the Southern Center for Human Rights, in Atlanta, where we represented indigent prisoners in a variety of matters including death row appeals and federal civil rights actions designed to improve the standard of conditions in prisons throughout the South.

I have spent my career as a trial lawyer and have endeavored to serve the public interest and the courts by devoting my energies to the representation of indigent people in the District of Columbia. My extensive trial experience and teaching responsibilities have provided a solid foundation to serve on the bench.

I believe I possess the necessary judgment, intelligence, work ethic, patience and commitment to our city to make an exemplary trial judge to serve the diverse communities that come before the Superior Court.

Attached hereto as Exhibits #2 and #3 respectively are a list of references and letters in support of the nomination. (Retained in Committee.)

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?
Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?
No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?
No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?
Yes.

C. POTENTIAL CONFLICTS OF INTERESTS

1. Describe all financial arrangements, deferred compensation agreements and other continuing dealings with business associates, clients or customers.

I am currently in a limited partnership with the law firm of Canan, Kiersh and Lobo. There is no deferred compensation agreements nor will there be any future business relationship if I am confirmed by the Senate.

I will be entitled to payment of outstanding accounts receivables from individual clients and from the Government pursuant to outstanding vouchers submitted under the Criminal Justice Act.

2. Indicate any investments, obligations liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

The partnership of Canan, Kiersh & Lobo will dissolve if I am confirmed by the Senate. My partners, Steven R. Kiersh and Cynthia W. Lobo, will be responsible for the winding up of the partnership affairs after confirmation.

I maintain a SEP/IRA with Kemper Investment Portfolios and several individual IRAs with First American bank.

3. Describe any business relationship, dealing or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

It appears that a possible conflict of interest could arise if my present partners, Mr. Kiersh or Ms. Lobo, appeared as counsel or as litigants in Court or if either of the above investment institutions appeared in Court as litigants. In addition, another source of conflict of interest could arise if any former client appeared in court as a litigant.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

Please see answer to question A. 19 concerning congressional testimony.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide copies of any trust or other agreements.)

In the event any potential conflict of interest may arise, it would be my intention to recuse myself as the presiding judge of the matter before the Court.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

In 1979 or 1980, I was appointed by the Superior Court to represent Robert E. Lindsey. Mr. Lindsey was charged with assault with intent to kill while armed, burglary in the first degree while armed and destruction of property (felony). At trial before the Honorable Carlisle E. Pratt, Mr. Lindsey was acquitted of all the above offenses but convicted of assault with a dangerous weapon as a lesser included offense of the charge of assault with intent to kill while armed. As Mr. Lindsey was a repeat offender, he was subject to an enhanced sentence beyond the statutorily proscribed ten years. Judge Pratt issued such a sentence.

I represented Mr. Lindsey in an unsuccessful appeal before the District of Columbia Court of Appeals. The case was not reported. I then represented Mr. Lindsey in a partially successful motion for reduction of sentence before Judge Pratt. At this juncture, Mr. Lindsey filed a *pro se* complaint with bar counsel stating in essence that he had been sentenced in excess of the statute and that counsel was at fault for this error. This matter was dismissed in an informal manner by Bar Counsel as being without merit and a formal complaint was never issued. Mr. Wallace Shipp of Bar Counsel's office handled this matter for the bar. (202-638-1501)

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

In August of 1973, I was arrested in Tucson, Arizona for simple possession of marijuana. I had been sitting in the passenger's seat of a friend's

car when it was stopped for a routine traffic violation. Two marijuana cigarettes were allegedly found in a small box outside the car. At no time did I ever possess, or have knowledge of the two marijuana cigarettes. Although arrested, the charge was never presented in court and no complaint was issued due to a lack of sufficient evidence. Attached hereto as Exhibit #4 is the discharge document pertaining to this incident. (Retained in Committee.)

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details.

I was a party in uncontested divorce proceedings issued in the State of Georgia in April, 1989. Attached hereto as Exhibit #5 is the Final Judgment and Decree. (Retained in Committee.)

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense?

No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

Please refer to question A.#20 regarding my qualifications for this nomination and the favorable background and employment experience which affirmatively qualifies me for this particular appointment.

I do not believe that there is any unfavorable information regarding my qualifications for this nomination.

E. FINANCIAL DATA

(Retained in Committee.)

F. QUESTIONS CONCERNING STATUTORY QUALIFICATIONS PURSUANT TO DISTRICT OF COLUMBIA COURT REFORM AND CRIMINAL PROCEDURE ACT OF 1970, SEC. 11-1501(b) OF THE D.C. CODE AS AMENDED

1. Are you a citizen of the United States?

Yes.

2. Are you a member of the bar of the District of Columbia?

Yes.

3. Have you been a member of the District of Columbia bar for at least five years? (Give year in which you became a member.)

Yes. I became a member of the District of Columbia bar in 1976.

4. If the answer to No. 3 is "No"—

(a) Are you a professor of law in a law school in the District of Columbia?

(b) Are you an attorney employed in the District of Columbia by the United States or the District of Columbia?

(c) Have you been eligible for membership in the bar of the District of Columbia for at least five years?

(d) Upon what grounds is that eligibility based?

Not applicable.

5. Are you a bona fide resident of the District of Columbia?

Yes.

6. Please state the addresses of your actual places of abode (including temporary residences with dates of occupancy for the last five years).

3811 Alton Place N.W., Washington, D.C. 20016, July 1991-present

3230 S. Stafford St., Arlington, Va. 22206, July 1990-June 1991

3172 17th St. N.W., Washington, D.C., December 1989-June, 1990

3230 S. Stafford St., Arlington, Va. 22206, March, 1987—December 1989

7. Have you maintained an actual place of abode in such area for at least 5 years?

Yes.

8. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nomination Commission?

No.

9. Have you been a member of either Commission within the last 12 months?

No.

AFFIDAVIT

Russell F. Luman being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Russell F. Luman

Subscribed and sworn before me this 29th day of March, 1983

[Signature]
Notary Public

Notary Public
[Signature]
[Signature]

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